

RULES OF
DEPARTMENT OF REVENUE
CAPITAL CREDIT REGULATIONS

810-2-7

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810-2-7-.01 SCOPE OF THE RULES AND DEFINITIONS.

(1) This chapter sets forth the rules to be used by the Alabama Department of Revenue in the administration of Sections 40-18-190 through 40-18-203, **Code of Alabama 1975**, as amended. These rules are promulgated to implement and clarify the procedures to be used by an Investing Company or Companies in order:

(a) to provide definitions of terms used in the regulations and procedures related to Reporting Company designation and responsibilities, Reg. 810-2-7-.01,

(b) to notify the Department of Revenue of the intent to establish a Project which will qualify for the Capital Credit, Reg. 810-2-7-.02,

(c) to clarify the minimum criteria for a Project to qualify for the Capital Credit and continuing availability requirements, Reg. 810-2-7-.03,

(d) to establish the available annual Capital Credit, Reg. 810-2-7-.04,

(e) to establish the methods used to determine the income generated by or arising out of a Qualifying Project, Reg. 810-2-7-.05,

(f) to establish the methods used to allocate the Project's Alabama taxable apportionable income and the Capital Credit among business entities engaged in Joint Ventures, Reg. 810-2-7-.06, and

(g) to provide that the Department of Revenue is furnished the information necessary to meet the reporting requirements of Section 40-18-198, **Code of Alabama 1975**, as amended, Reg. 810-2-7-.07.

(2) **DEFINITIONS.** The following terms have the meaning ascribed to them for purposes of the regulations to implement Sections 40-18-190 through 40-18-203, **Code of Alabama 1975**, as amended, unless the context clearly indicates otherwise.

(a) **Affidavit.** A sworn statement signed in the presence of a notary public.

(b) **Base Wage Requirement.** Employees which are not employed by direct processors of agricultural food products shall be paid either an average hourly wage of not less than eight dollars (\$8) per hour or an average Total Compensation of not less than ten dollars (\$10) per hour, including benefits. Wages of employees employed by direct processors of agricultural food products shall be determined by the local labor market. If reliable local labor statistics are not available, the base wage requirement for employees employed by direct processors of agricultural food products shall be determined by the

Department based on a source of wage information that best represents the average local hourly wage rate in Alabama.

(c) **Capital Cost.** All costs and expenses incurred by one or more Investing Companies in connection with the acquisition, construction, installation and equipping of a Qualifying Project as defined in Section 40-18-190(11), **Code of Alabama 1975**, as amended. The Capital Cost shall begin with the date on which such acquisition, construction, installation and equipping commences and end on the date on which the Qualifying Project is Placed in Service.

1. If the Qualifying Project is a Headquarters Facility and utilizes an operating lease the Capital Costs may include the net present value of the minimum mandatory payments required to be made by the Investing Company pursuant to the lease. The net present value shall be computed by using the applicable federal rate for the month in which the qualifying Project is Placed in Service and for the term most closely approximating the term of the lease.

(i) The applicable federal rates (AFRs) shall be the annual compounding rates as computed by the Internal Revenue Service for the term most closely approximating the term of the lease as provided in I.R.C. Section 1274(d), which is published monthly by the Internal Revenue Service.

2. Capitalized repairs, rebuilds, maintenance and replacement equipment will not be recognized as "Capital Costs" and will not qualify for the Capital Credit.

(i) Replacement equipment is equipment that performs the same function as the equipment it replaces. Replacement equipment is considered upgraded equipment when it performs the same functions with an improvement of at least fifty percent (50%) in capacity (output) and/or fifty percent (50%) reduction in production time. Replacement equipment does not include upgraded equipment that performs one or more additional functions in addition to performing the same function as the equipment it replaced.

3. Capital Costs shall not include any costs or expenses for or associated with property (real or personal) that was owned or leased by the Investing Company or any related business or party before the commencement of the acquisition, construction, installation or equipping of the qualifying project, whether in whole or in part, unless the costs and expenses are for or associated with personal property that has been physically located outside the state continuously for the one year period next preceding the earlier of the date on which the personal property was physically located within this state for use with a Qualifying Project or the date on which the Qualifying Project was Placed in Service.

(i) The Capital Cost of such property shall be equivalent to the book value of the property at the time such property was located at the Project site.

4. Only cost of equipment whose costs are incurred as of the date the project is Placed in Service shall be included in capital costs when equipment is acquired through a capital lease provision.

(d) **Capital Credit.** An annual amount equal to five percent of the Capital Costs of the Qualifying Project against the Alabama income tax liability generated by or arising out of the Qualifying Project's Alabama income. The Capital Credit period shall begin with the year during which the Qualifying Project is Placed in Service and continue for 19 consecutive years thereafter, assuming all Capital Costs, New Employee, and Base Wage Requirements are met.

(e) **Department.** The Alabama Department of Revenue.

(f) **Headquarters Facility.** A facility which will serve as either the national, regional, or state headquarters for an Investing Company that conducts significant business operations outside the state of Alabama and will serve as the principal office of the principal operating officer of the Qualifying Project. The principle operating officer shall be defined as the person with chief responsibility for the daily operations of the Qualifying Project.

(g) **Industrial, Warehousing or Research Activity.** Any trade or business described in the 1987 Standard Industrial Classification Major Groups 20 to 39, inclusive, 50 and 51, Industrial Group Number 737, and Industry Numbers 8731, 8733, 8734, as set forth in the Standard Industrial Classification Manual published by the United States Government Office of Management and Budget or any process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product.

(h) **Investing Company.** Any corporation, partnership, limited liability company, proprietorship, trust or other business entity, regardless of form, making an investment in a Qualifying Project.

(i) **Joint Venture.** Any form of business entity entered into by one or more Investing Companies in connection with a Qualifying Project. A project entity shall be created by the Investing Companies in a Joint Venture to simplify the reporting for income tax purposes.

(j) **Joint Venture Agreement.** All agreements among the Investing Companies, or between one or more Investing Companies and the Joint Venture, concerning affairs of the Joint Venture and responsibilities of Investing Companies, whether oral or written, and whether or not embodied in a document referred to by the Investing Companies as the Joint Venture agreement. All arrangements among Investing Companies, or between one or more Investing Companies and the Joint Venture relating to the Joint Venture, direct

and indirect, including puts, options, and other buy-sell agreements, and any other "stop-loss" arrangement, are considered to be part of the Joint Venture agreement. In addition, the Joint Venture agreement includes provisions of Federal, State, or local law that govern the affairs of the Joint Venture or are considered under such law to be a part of the Joint Venture agreement. An agreement with a Investing Company or a Joint Venture shall include an agreement with a Person related, within the meaning of I.R.C. section 267(b) (without modification by I.R.C. section 267(e)(1)), to such Investing Company or Joint Venture. For purposes of the preceding sentence, I.R.C. section 267(b) shall be applied by (1) substituting "80 percent or more" for "more than 50 percent" each place it appears in such sections, (2) excluding brothers and sisters from the members of a Person's family, and (3) disregarding I.R.C. section 267(f)(1)(A).

(k) **New Employees.** Those Persons who have not been previously employed at the site on which the Qualifying Project is or will be Placed in Service or have not been employed by the Investing Company or Companies in this state and will be employed full-time as a direct result of the Qualifying Project being Placed in Service and will be subject to the personal income tax imposed by Section 40-18-2 of the **Code of Alabama 1975**, as amended, upon commencement of employment at the Qualifying Project.

(l) **Notice.** Any communication, including, but not limited to, a letter, an information bulletin, a tax assessment, a notice, a summons, etc. mailed or delivered by the Department.

(m) **Person.** Any individual, association, estate, trust, partnership, corporation, or other entity of any kind.

(n) **Predominant Trade or Business Activity.** More than 50% of the trade or business conducted at the Qualifying Project must constitute an Industrial enterprise, Warehousing enterprise, Research enterprise, or be a process or treatment facility which recycles, reclaims, or converts materials, which include solids, liquids, or gases, to a reusable product.

(o) **Project.** Any land, building or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, to be used as part of a facility of a business located in the state.

(p) **Small Business Addition.** An addition which includes Capital Costs of any land, building or other improvement, and all real and personal properties deemed necessary or useful in connection therewith, whether or not previously in existence, to be used as part of an existing facility of a business located in the state that, prior to the date on which the addition is Placed in Service, had 100 or fewer full-time employees.

(q) **Tax Year.** The applicable taxable year as the term is defined in Section 40-18-1(11) of the **Code of Alabama 1975**, as amended.

(r) **Total Compensation.** Includes base wages and benefits, but excludes bonuses and overtime.

(s) **United States Person.** Any Person who is

1. a citizen or full-time resident of the United States that is subject to the jurisdiction of the courts of the State of Alabama,

2. a partnership, corporation, or limited liability company created or organized in the geographical United States or under the law of the United States or of any State including the District of Columbia,

3. any estate or trust (other than a foreign estate or foreign trust, within the meaning of Internal Revenue Code Section 7701(a)(31), as amended from time to time).

(t) **Placed in Service.** For purposes of the credit allowed by Sections 40-18-190 through 40-18-203, **Code of Alabama 1975**, as amended,

1. a Qualifying Project shall be considered Placed in Service on the earlier of the following days neither of which shall be deemed to have occurred prior to the first day on which the Qualifying Project's total Capital Costs have been incurred:

(i) the day on which, under the taxpayer's depreciation practice, the period for depreciation with respect to such Qualifying Project begins; or

(ii) the day on which the Qualifying Project begins a specifically designed function for the production of revenues.

Thus, if Qualifying Project meets the conditions of subdivision (ii) of this subparagraph on a particular day, it shall be considered Placed in Service on such day notwithstanding that the period for depreciation with respect to such Qualifying Project begins on a succeeding day because, for example, under the taxpayer's depreciation practice such Qualifying Project is accounted for in a multiple asset account and depreciation is computed under an "averaging convention", or depreciation with respect to such Qualifying Project is computed under the completed contract method, the unit of production method, or the retirement method.

2. Notwithstanding subparagraph 1 of this paragraph, a Qualifying Project with respect to which the principal Capital Costs are incurred under a lease as permitted in

Section 40-18-190(2)g, **Code of Alabama 1975**, as amended, shall be considered Placed in Service on the day on which possession is transferred to such lessee.

3. Project property owned or leased before the commencement of the acquisition, construction, installation or equipping of the Qualifying Project:

(i) The credit allowed by Section 40-18-194, **Code of Alabama 1975**, as amended, with respect to any Qualifying Project's property shall begin in the first taxable year in which such Qualifying Project's property is Placed in Service in Alabama. The determination of whether a Qualifying Project is a Qualifying Project in the hands of the taxpayer shall be made with respect to such first taxable year. Thus, if a taxpayer places property owned or leased before the commencement of the acquisition, construction, installation or equipping of the Project in service in Alabama on a day and such Qualifying Project does not qualify as a Qualifying Project (or only a portion of such Qualifying Project qualifies as a Qualifying Project) in such year, no credit (or a credit only as to the portion which qualifies in such year) shall be allowed to the taxpayer with respect to such Qualifying Project notwithstanding that such Qualifying Project (or a greater portion of such Qualifying Project) qualifies as a Qualifying Project in a subsequent day.

(i) EXAMPLE: If a taxpayer places property, eventually used in a Qualifying Project, in service in Alabama during 1993 and uses the property entirely for purposes other than a Qualifying Project in such year, but in 1994 begins using the property in a Qualifying Project in a trade or business, no credit is allowable to the taxpayer under Section 40-18-190(2), **Code of Alabama 1975**, as amended, with respect to such Qualifying Project's property.

(ii) Notwithstanding subdivision (a) of this subparagraph, if, for the first taxable year in which a Qualifying Project is Placed in Service by the taxpayer, the Qualifying Project qualifies as a Qualifying Project but the basis of the Qualifying Project does not reflect its full cost for the reason that the total amount to be paid or incurred by the taxpayer for the Qualifying Project is indeterminate, a credit shall be allowed to the taxpayer for such first taxable year with respect to so much of the cost as is reflected in the basis of the Qualifying Project ending on the date on which the Qualifying Project is Placed in Service, and an additional credit shall not be allowed to the taxpayer for any subsequent taxable year with respect to the additional cost paid or incurred during such year and reflected in the basis of the Qualifying Project as of the close of such year.

(i) EXAMPLE: Assume that in 1995 X Corporation, a manufacturing company which makes its return on the basis of a calendar year, enters into an agreement with Y Corporation, a builder, to construct a certain facility built by Y. Assume further that part of the funds for the construction of X's facility is advanced by Y under a contract providing that X will repay the advances over a 10-year period in accordance with an agreed formula, after which no further amounts will be repayable by X even though the full

amount advanced by Y has not been repaid. Assuming that the facility is Placed in Service in 1995 and qualifies as a Qualifying Project, X is allowed a credit for 1995 with respect to its basis in the facilities at the close of 1995. For each succeeding taxable year X is not allowed an additional credit with respect to the increase in the basis of the facility resulting from the repayments to Y during such year.

4. For instances in which an Investing Company is planning multiple stages of investment (i.e., phases), the Capital Credit may begin when the last stage of investment is Placed in Service. All investment stages must be identified in the Project description on the statement of intent (FORM INT) filed with the Department. The statement of intent must be filed with the Department before any stages of investment are Placed in Service.

(i) The Capital Costs associated with stages of investment Placed in Service in a prior year may be included in computing the Capital Credit for a Qualifying Project. However, the Capital Credit cannot be utilized until all of the stages of investment become a Qualified Project and the last stage of investment is Placed in Service .

(ii) All stages of investment (i.e. phases) reported on the statement of intent (FORM INT) must be planned for a single geographical location. This requirement shall only apply to a Project with stages of investment (i.e., phases).

(u) **Qualifying Project.** A Project sponsored or undertaken by one or more Investing Companies meeting the requirements for the type of trade or business activity conducted, the minimum capital costs incurred, the minimum number of jobs for New Employees, and the Base Wage Requirement for New Employees.

(v) **Reporting Company.** The corporation, partnership, limited liability company, proprietorship, trust or other business entity participating in a Joint Venture in connection with a Qualifying Project, designated in writing, with the signed consent of participating entities having a majority interest in the Joint Venture, as the business entity that will act on behalf of all the Investing Companies in the Joint Venture, to report to the Department the intent to undertake and sponsor a Qualifying Project and to receive from the Department any notice, directly or indirectly, related to the undertaken Qualifying Project. The Joint Venture shall be recognized by the establishment of a project entity created by the Investing Companies.

1. **Reporting Company absent a proper written designation.** If there is no Investing Company who has been so designated, the Investing Company having the largest profits interest in the Joint Venture at the close of the taxable year involved (or, where there is more than 1 such Investing Company, the 1 of such Investing Companies whose name would appear first in an alphabetical listing). If there is no Investing Company designated in writing and the Department determines that it is impracticable to

apply the preceding sentence, the business entity selected by the Department shall be treated as the Reporting Company.

2. Limitation on designation of Reporting Company who is not a United States Person. If any United States Person would be eligible under paragraph (2)(l) of this regulation to be designated as the Reporting Company of a Joint Venture for a taxable year, no Person who is not a United States Person may be designated as the Reporting Company of the Joint Venture for that year without first obtaining the Department's consent.

(w) **Benefits.** Includes cash and noncash remunerations given by the employer over and above base wages. These remunerations must be received by the employee for services performed for the employer. Following are items that should be included as remunerations for purposes of this regulation, however, this list is not meant to be all-inclusive: housing, transportation, meals, health insurance, and life insurance. Following are items that should not be included as remunerations for purposes of this regulation, however, this list is not meant to be all-inclusive: unemployment compensation, FICA taxes, and workmen's compensation.

(3) **Procedures.**

(a) **Designation of Reporting Company by Investing Companies with majority interest.** The Joint Venture may designate a Reporting Company for a Joint Venture taxable year at any time by filing a statement with the Department. The statement shall --

1. Identify the Joint Venture and the designated Reporting Company by name, address, and taxpayer federal identification number,

(i) Specify the Joint Venture taxable year to which the designation relates,

2. Declare that it is a designation of a Reporting Company for the taxable year specified and may indicate that the designation is effective until changed, and

3. Be signed by Persons who are, at the time of signing the designation, Investing Companies holding more than 50 percent of the aggregate interest in Joint Venture profits held by all Investing Companies. For purposes of this paragraph (3)(a), all limited Joint Venture interests held by Investing Companies shall be included in determining the aggregate interest in Joint Venture profits held by such Investing Companies.

(b) **Department notices sent to Reporting Company.** In general, for purposes of Title 40, **Code of Alabama 1975**, as amended from time to time, a notice is treated as mailed to the Reporting Company on the earlier of --

1. The date on which the notice is mailed to "THE REPORTING COMPANY" at the address of the Joint Venture as provided to the Department, or

2. The date on which the notice is mailed to the Person who is the Reporting Company at the address of that Person as provided to the Department.

3. **EXAMPLE.** The provisions of this section may be illustrated by the following example: Joint Venture P designates B as its Reporting Company in accordance with paragraph (3)(a). On December 1 a notice of the beginning of an administrative proceeding is mailed to "THE REPORTING COMPANY" at the address of P. On January 10, a copy of the notice is mailed to B at B's address. December 1 is treated as the date that the notice was mailed to the Reporting Company.

(c) **Responsibilities of the Reporting Company.** In general, notice to the Reporting Company shall be notice to the Investing Companies specified in paragraph (3)(d) of this section concerning information provided by the Department with respect to the following:

1. Closing conference with the examining agent,
2. Proposed adjustments, rights of appeal, and requirements for filing of a protest,
3. Time and place of any appeals or hearings,
4. Acceptance by the Department of any settlement offer,
5. Consent to the extension of the period of limitations with respect to all Investing Companies,
6. Filing of a request for administrative adjustment on behalf of the Joint Venture,
7. Filing by the Reporting Company or any other Investing Company of any petition for review, and
8. Filing of any appeal with respect to any final assessment or determination.

(d) **Investing Companies to be notified.** The Reporting Company shall be deemed to have provided information with respect to any action or other matter specified in paragraph (3)(c) of this section to all Investing Companies with an interest in the Joint Venture except Investing Companies.

1. Who are indirect Investing Companies and who are not identified to the Reporting Company at least 30 days before the Reporting Company is required to provide the information, or

2. Who have already received information with respect to the action or matter from any other Person.

(e) **Time for furnishing information.** The Reporting Company shall be deemed to have furnished information with respect to an action or other matter described in paragraph (3)(d) of this section within 10 days of taking the action or receiving information with respect to that matter.

Author: Jeff Taylor

Authority: Sections 40-2A-7(a)(5) 40-18-197, **Code of Alabama 1975**, as amended

History: Emergency regulation effective March 18, 1996, expires July 15, 1996.
Permanent regulation filed June 17, 1996, effective date July 21, 1996.
Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.02 Procedure to Notify Department of Intent to Initiate Project.

(1) **SCOPE.** This regulation applies to the designation of one Investing Company, which is a participant in a Joint Venture with one or more Investing Companies, to act as the sole Reporting Company on behalf of the group of Investing Companies. This regulation also applies to the information required to be provided to the Department by a Reporting Company in order to notify the Department of the intent of the Investing Company or Companies to initiate a Project which will qualify for the Capital Credit.

(2) **DEFINITIONS.** Terms defined in Reg. 810-2-7-.01 are incorporated herein by reference for purposes of this regulation, unless the context clearly indicates otherwise.

(3) **PURPOSE.** The purpose of this regulation is to provide the procedure by which the Department is notified of the intent by one or more Investing Companies to initiate a Project which will qualify for the Capital Credit and to provide the Department with the information necessary to report to the Legislature and the public the information required by Sections 40-18-190 through 40-18-203, **Code of Alabama 1975**, as amended.

(4) **PROCEDURE.** Prior to the date on which the Qualifying Project is Placed in Service, the Investing Company or, where more than one Investing Company is participating in the Qualifying Project, the Reporting Company, shall file with the Department a written statement of intent (FORM INT) to claim the Capital Credit provided by Sections 40-18-190 through 40-18-203, **Code of Alabama 1975**, as amended. The statement shall contain;

- (a) A description of the Qualifying Project;
- (b) The predominant type trade or business activity to be conducted at the Qualifying Project;
- (c) The Standard Industrial Classification Code for the Qualifying Project;
- (d) Type of Project entity (i.e., C corporation, S corporation, partnership, proprietorship, limited liability company, etc);
- (e) The date on which the acquisition, construction, installation or equipping of the Project was commenced or is expected to commence;
- (f) The actual costs, or if the actual costs are not known, the estimated Capital Costs of the Project;
- (g) Current number of employees;

(h) The number of New Employees to be employed at the Project, the average hourly wage, and the average Total Compensation of each New Employee;

(i) The name and Federal Employer's Identification Number (FEIN) of each Investing Company;

(j) The percentage or ownership in the Project of each Investing Company to become entitled to the Capital Credit;

(k) The name of the Chief Financial Officer, Chief Executive Officer or Person who will sign the tax return on behalf of the Investing or Reporting Company;

(l) An election by the Investing or Reporting Company specifying the method used to determine the income generated by or arising out of the Qualifying Project;

(m) An election by the Investing or Reporting Company specifying methods to be used to allocate the Capital Credit among the shareholders, partners, members, owners or beneficiaries of the Investing Company or Companies entitled to the credit; and

(n) The location, date of closing, and number of full time employees at the time of closure of any facilities within Alabama closed within the past two years.

(5) Once a Qualifying Project is Placed in Service the Investing Company or the Reporting Company must file with the Department a written statement on a form prescribed by the Department (FORM INT-2) to report the actual investment in the Qualifying Project. The statement shall contain:

(a) The Project number assigned to the Qualifying Project by the Department;

(b) A description of the Qualifying Project;

(c) The predominant type trade or business activity conducted at the Qualifying Project;

(d) The Standard Industrial Classification Code for the Qualifying Project;

(e) Type of Project entity (i.e., C corporation, S corporation, partnership, proprietorship, limited liability company, etc);

(f) The actual Capital Costs of the Project;

(g) The number of New Employees employed at the Project, the average hourly wage, and the average Total Compensation of each New Employee;

(h) The location, date of closing, and number of full time employees at the time of closure of any facility or facilities within Alabama closed within the past two years.

(6) **Joint Venture.** Where in connection with a Qualifying Project, one or more entities ***shall*** enter into a Joint Venture in the form of a limited liability company, partnership, or other form of business entity, the written statement required to be filed by this regulation, shall be filed by the Reporting Company only. Provided, however, the Reporting Company shall file with the written statement its Joint Venture Agreement and the document designating it the Reporting Company for the Qualifying Project. The written statement is not required to be filed by each entity engaged in the Joint Venture.

(7) **Change in ownership.** If at any time during the period which an Investing Company or Companies is qualified for the Capital Credit, there is a change in the company or Companies participating in the Qualifying Project, or a change in the ownership regarding the shareholders, partners, members, owners or beneficiaries of the Investing Company or Companies, the Investing or Reporting Company, whichever is applicable, shall file or caused to be filed with the Department on a form prescribed by the Department (FORM INT-4), to report the Investing Company or Companies, or the shareholders, partners, members, owners or beneficiaries of the Investing Company or Companies entitled to the credit as a result of the change in ownership.

Author: Verlon Frost, Melody Moncrief, Jeff Taylor

Authority: Section 40-2A-7(a)(5), 40-18-197, ***Code of Alabama 1975***, as amended.

History: Emergency regulation effective August 17, 1995 expired December 14, 1995.
Permanent regulation filed November 9, 1995, effective date December 14, 1995.

Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.03 Qualification for Credit and Continuing Availability Requirements.

(1) **SCOPE.** This regulations applies to the minimum criteria required for a Project to qualify for the Capital Credit and continuing availability requirements.

(2) **DEFINITIONS.** Terms defined in Reg. 810-2-7-.01 are incorporated herein by reference for purposes of this regulation, unless the context clearly indicates otherwise.

(3) **PURPOSE.** The purpose of this regulation is to specify the minimum criteria required in order to qualify a Project to receive the credit against the Alabama income tax liability and continuing availability requirements.

(4) **PROCEDURE.** A Project sponsored or undertaken by one or more Investing Companies which is in compliance with the capital cost requirements and which is in compliance during the tax year with, the new employees requirements, the base wage requirements, and the continuing availability requirements shall entitle the Investing Company or Companies, or the shareholders, partners, members, owners, or beneficiaries to the Capital Credit.

(a) **Minimum Capital Costs**

1. Capital Costs incurred which are not less than \$2,000,000 and the Predominant Trade or Business Activity conducted at the Project will constitute an Industrial, Warehousing or Research activity.

2. A Small Business Addition the Capital Costs incurred which are not less than \$1,000,000 and the Predominant Trade or Business Activity conducted at the Project will constitute an Industrial, Warehousing or Research activity.

3. A Headquarters Facility the capital cost of which is not less than \$2,000,000.

(b) **Minimum New Employees**

1. Not less than 20 jobs for New Employees at a Qualifying Project other than a Small Business Addition must be provided beginning with the date which is not later than one year after the Qualifying Project is Placed in Service and the average wages for all New Employees at the Qualifying Project be not less than the Base Wage Requirement by the date which is not later than one year after the Qualifying Project is Placed in Service and during each year during which all or part of the Capital Credit is available with respect to the Qualifying Project.

2. Not less than 15 jobs for New Employees at a Qualifying Project which is a Small Business Addition must be provided beginning with the date which is not later than one year after the Qualifying Project is Placed in Service and the average wages for all New Employees at the Qualifying Project be not less than the Base Wage Requirement of this regulation by the date which is not later than one year after the Qualifying Project is Placed in Service and during each year during which all or part of the Capital Credit is available with respect to the Qualifying Project.

3. If an Investing Company closes an existing facility in this state and within two years following the closing of the existing facility places a Qualifying Project in service, only the number of jobs for New Employees in excess of the number of employees who worked at the existing facility at the time of the closure shall be deemed jobs for New Employees for the purposes of determining the number of jobs for New Employees.

4. A company shall be considered to have met the employment requirement for the portion of the year following the date upon which such requirement is first met and for each year thereafter (such portion of a year and each full year thereafter during the 20 year credit period is hereinafter referred to as a Compliance Year) if the employment requirement is satisfied for at least 11/12 of each Compliance Year.

(c) Base Wage Requirements

1. Unless a Qualifying Project is a direct processor of agricultural food products, all New Employees at a Qualified Project must either have an average hourly wage of at least eight dollars (\$8) per hour or an average Total Compensation of at least ten dollars (\$10) per hour. Direct processors of agricultural food products are subject to the local labor market.

2. A company shall be considered to have met the wage requirement for the portion of the year following the date upon which such requirement is first met and for each year thereafter (such portion of a year and each full year thereafter during the 20 year credit period is hereinafter referred to as a Compliance Year) if the wage requirement is met based on an average determined over each Compliance Year.

(d) Continuing Availability Requirements. Any Investing Company that meets the employment and wage requirements by a date which is not later than one year after the date on which the Qualifying Project is Placed in Service, but fails to meet such requirements in any subsequent Compliance Year, may still claim the Capital Credit for each Compliance Year in which such Investing Company again meets the employment and wage requirements of this section. In no event, however, shall an Investing Company be able to claim a Capital Credit in a Compliance Year beginning after the third Compliance Year (whether or not consecutive) in which the Investing Company fails to meet the

employment and wage requirements of this section or more than nineteen (19) years after the year in which the Qualifying Project is first Placed in Service.

Author: Verlon Frost, Melody Moncrief, Jeff Taylor.
Authority: Sections 40-2A-7(a)(5), 40-18-197, **Code of Alabama 1975**, as amended.
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Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.04 Computation of Available Capital Credit.

(1) **SCOPE** This regulation specifies the amount of Capital Credit available to an Investing Company or Companies or its shareholders, partners, members, owners or beneficiaries.

(2) **DEFINITIONS.** Terms defined in Reg. 810-2-7-.01 are incorporated herein by reference for purposes of this regulation, unless the context clearly indicates otherwise.

(3) **PURPOSE.** The purpose of this regulation is to specify the annual amount of credit available, to provide a method to determine the amount of credit available during tax periods of less than one year, to provide the method used to determine the applicable share of the Capital Credit available to each Investing Company or its shareholders, partners, members, owners, or beneficiaries for each tax year which the Investing Company qualifies for the Capital Credit.

(4) **PROCEDURE.** An Investing Company or Companies in a Qualifying Project as defined in Regulation 810-2-7-.03 or the shareholders, partners, members, owners, or beneficiaries of the Investing Company or Companies shall be allowed a credit against the Alabama income tax liability generated by or arising out of the Qualifying Project.

(a) The Capital Credit shall be limited to the income tax liability attributable to the income generated by or arising out of the Project or five percent of the Capital Costs of the Qualifying Project, whichever is less.

1. The Alabama income tax liability attributable to the Alabama income generated by or arising out of the Project may be determined by either of the following methods.

(i) Allocation Method. The recipient of the capital credit may allocate the Alabama income tax liability attributable to the Alabama income generated by or arising out of the Project using a computation determined by the Department.

(ii) With/without Method. This method requires the recipient to compute its tax liability attributable to the Alabama income generated by or arising out of the Project by completing a second set of federal and state income tax returns excluding the Alabama income attributable to project operations. Any deductions limited by the amount of adjusted gross income, including the federal income tax deduction for state purposes, shall be adjusted in the second returns. The difference in the Alabama income tax liability is the amount attributable to the Alabama income generated by or arising out of the Project.

(b) The credit shall be available for a period of 20 years beginning with the year in which the Qualifying Project is Placed in Service and continuing for 19 consecutive years thereafter.

1. For any tax return filed during the 20 year period which is for a tax period of less than one year, the credit available for the short year period shall be prorated based on a ratio, the numerator of which is the number of days in the tax period, and the denominator of which is 365.

2. It is the intent of this Regulation to allow all entities qualifying for the Capital Credit the full 240 (i.e., 20 years X 12 months) months of credit.

(c) If the Investing Company or Companies are not ultimately liable for the Alabama income tax liability on the income generated by or arising out of the Qualifying Project, the credit shall be allocated to those shareholders, partners, members, owners, or beneficiaries of the Investing Company or Companies which are ultimately liable for the Alabama income tax liability attributable to the income generated by or arising out of the Qualifying Project.

(d) A change in ownership or assignment of interest in any Project shall not increase the amount of Capital Credit available and the purchasers, assignees, or successors of the Project or interest therein shall be entitled to the Capital Credit upon the same conditions and for the same period as the Investing Company or Companies originally entitled to the Capital Credit.

(e) The aggregate amount of the Capital Credits utilized during the 20 year period shall not exceed 100 percent of the Capital Costs of the Qualifying Project.

1. For purposes of determining the Capital Credits utilized by shareholders, partners, members, owners, or beneficiaries of the Investing Company or Companies, the maximum applicable rate applicable to individuals under Section 40-18-5, **Code of Alabama 1975**, as amended, or the maximum applicable rate applicable to corporations under Section 40-18-31, **Code of Alabama 1975**, as amended, whichever is applicable, shall be limited to the income of the Investing Company generated by or arising out of the Qualifying Project, determined after the application of all other deductions, losses, or credits permitted under Titles 40 and 41 of the Code of Alabama 1975.

(f) The Capital Credit allowable shall be limited to the tax liability attributable to the income generated by or arising from the qualified Project within the state.

Author: Verlon Frost, Melody Moncrief, and Jeff Taylor.

Authority: Sections 40-2A-7(a)(5) and 40-18-197, **Code of Alabama 1975**, as amended.

History: Emergency regulation effective August 17, 1995, expired December 14, 1995.
 Permanent regulation filed November 9, 1995, effective date December 14, 1995.
 Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.05 Determination of Qualifying Project Income.

(1) **SCOPE.** This regulation applies to the method by which a Reporting Company shall specify the method by which income generated by or arising out of a Qualifying Project will be determined.

(2) **DEFINITIONS.** The following terms have the meaning ascribed to them for purposes of this regulation, unless the context clearly indicates otherwise.

(a) **Project Property Factor.** The Project Property Factor is a fraction, the numerator of which is the total average Project property in Alabama owned during the tax period by the Investing Company, and the denominator of which is the total average property in Alabama (generally, the numerator of the property factor in the Alabama income tax return) during the tax period. The numerator of this Project factor shall be computed in a like manner as provided for the property factor in Chapter 27 of Title 40.

(b) **Project Payroll Factor.** The Project Payroll Factor is a fraction, the numerator of which is the total amount paid in Alabama during the tax period by the Investing Company for compensation paid those employees employed at the Qualifying Project site, and the denominator of which is the Total Compensation paid in Alabama for the production of business income (generally, the numerator of the payroll factor in the Alabama income tax return) during the tax period. The numerator of this Project factor shall be computed in a like manner as provided for the payroll factor in Chapter 27 of Title 40.

(c) **Project Sales Factor.** The Project Sales Factor is a fraction, the numerator of which is the total Project sales in Alabama made during the tax period by the Corporation, and the denominator of which is the total sales in Alabama (generally, the numerator of the sales factor in the Alabama income tax return) during the tax period. The numerator of this Project factor shall be computed in a like manner as provided for the sales factor in Chapter 27 of Title 40.

(3) **PURPOSE.** The purpose of this regulation is to provide guidelines necessary to determine the income generated by and arising out of the Qualifying Project.

(4) **PROCEDURE.** The Department of Revenue and the Reporting Company shall agree in writing to use one of the following methods to determine income generated by or arising out of the Qualifying Project:

(a) **Two Factor Method.** Where the Project is a Headquarters Facility or has sales from the Project's operations principally to affiliated or related Persons or has no sales of its own, the Reporting Company will apportion the total amount of its Alabama

taxable apportionable income, including related federal income tax deduction, to the Project by multiplying the income by a fraction, the numerator of which is the Project's property factor plus the Project's payroll factor, and the divisor of which is two (2). If any factor is not used in the production of business income, it shall be eliminated and the divisor reduced accordingly. Form AR which shows the two factor calculations shall be filed with the project entity's income tax return to reflect the income generated by or arising out of the project.

(b) **Three Factor Method.** Where the Project has sales from the Project's operations principally to unaffiliated or unrelated Persons, the Reporting Company will apportion the total amount of its Alabama taxable apportionable income, including related federal income tax deduction, to the Project by multiplying the income by a fraction, the numerator of which is the Project's property factor plus the Project's payroll factor plus the Project's sales factor, and the divisor of which is three (3). If any factor is not used in the production of business income, it shall be eliminated and the divisor reduced accordingly. Form AR which shows the three factor calculations shall be filed with the project entity's income tax return to reflect the income generated by or arising out of the project.

(c) **Separate Accounting.** If the methods listed above do not effectuate an equitable determination of income generated by or arising out of the Qualifying Project, in a fair and equitable manner, the Reporting Company may request or the Department may require such income to be calculated using a separate accounting method. The Reporting Company will determine the total amount of the Qualifying Project's income, including the related federal income tax deduction, allocable to the Project by using a separate accounting method, agreed upon by the Department. Such separate accounting method will require the accounting and related records to be maintained in a manner showing the Project's separate income and operations in Alabama and utilize "arm's length" pricing to the sales of goods or services between the Project and either affiliated legal entities or other accounting units in the Corporation. Form AR shall be filed with the project entity's income tax return to reflect the income generated by or arising out of the project.

(5) The Reporting Company will indicate the preference of the two factor method, three factor method, or a separate accounting method when filing the statement of intent (FORM INT) with the Department. After the statement of intent (Form INT) has been filed indicating which method is preferred, the Alabama Department of Revenue will initiate an agreement outlining the appropriate method of accounting to be used at the project. This agreement shall serve as the written agreement required by Section 40-18-192, **Code of Alabama 1975**, as amended between the Department of Revenue and the Investing Company or Companies specifying the method by which income generated by or arising out of the Project will be determined.

(6) **Record Keeping Requirements.** Each Investing Company receiving a Capital Credit shall maintain or caused to be maintained records with respect to the Qualifying Project sufficient to allow the income of the Investing Company to be identified separately from other income of such Investing Company subject to Alabama income taxation.

(7) **Year to Year Consistency.** In filing income tax returns with Alabama, the Investing Company shall not depart from or modify the accounting treatment of any material component used in computing the income tax credit without the prior written consent from the Department. The taxpayer shall show the nature and extent of the modification in the return for the year in which the change occurs.

Author: Verlon Frost, Melody Moncrief and Jeff Taylor.

Authority: Sections 40-2A-7(a)(5) and 40-18-197, ***Code of Alabama 1975***, as amended.

History: Emergency regulation effective March 18, 1996, expires July 15, 1996.
Permanent regulation filed June 17, 1996, effective date July 21, 1996.
Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.06 Allocation of the Capital Credit.

(1) **SCOPE.** This regulation applies to the written agreement between the Department and the Investing Company or Companies with respect to Qualifying Projects undertaken by partnerships, limited liability companies or other Joint Ventures and the method by which the Qualifying Project's Alabama taxable apportionable income or the Capital Credit (or item thereof) is allocated among the business entities investing in the Project.

(2) **PURPOSE.** The purpose of this regulation is to provide the guidelines necessary to allocate the Project's Alabama taxable apportionable income or the Capital Credit (or item thereof) among the shareholders, partners, members, owners or beneficiaries of the Investing Company or Companies entitled to the Project's Alabama taxable apportionable income or the Capital Credit (or item thereof).

(3) **PROCEDURE.**

(a) **Allocation of Capital Credit.** The Capital Credit shall be allocated among the shareholders, partners, members, owners or beneficiaries of the Investing Company or Companies entitled to the Capital Credit based on their distributive share, whether or not distributed, of the Project's Alabama taxable apportionable income (or item thereof).

1. The Allocations of Capital Credit schedule contained in Form:INT, and Form:INT-2, shall serve as the written agreement between the Department and the Investing Company or Companies with respect to Qualifying Projects undertaken by partnerships, limited liability companies or other Joint Ventures and the method by which the Qualifying Project's Alabama taxable apportionable income or the Capital Credit (or item thereof) is allocated among the business entities investing in the Project. The most recent form filed by the Project shall be considered the current allocation to be used by the Project.

(i) Any changes made to the Allocation of Capital Credit schedule after the filing of the Form:INT-2 by the Reporting Company shall be reported to the Department on the Form:INT-4.

(b) **Substantial Economic Effect.** If the allocation of either the Project's Alabama taxable apportionable income or the Capital Credit (or item thereof) does not have substantial economic effect, then the Investing Company's distributive share of such income or credit (or item thereof) shall be determined in accordance with such Investing Company's interest in the Joint Venture taking into account all facts and circumstances.

1. **Two-part analysis.** The determination of whether an allocation of the Project's Alabama taxable apportionable income or the Capital Credit (or item thereof) to

an Investing Company has substantial economic effect involves a two-part analysis that is made as of the end of the taxable year to which the allocation relates.

(i) First, the allocation must have economic effect (within the meaning of paragraph (3)(b)2 of this section).

(ii) Second, the economic effect of the allocation must be substantial (within the meaning of paragraph (3)(b)3 of this section).

2. Economic effect. In order for an allocation to have economic effect, it must be consistent with the underlying economic arrangement of the Investing Companies. This means that in the event there is an economic benefit or economic burden that corresponds to an allocation, the Investing Company to whom the allocation is made must receive such economic benefit or bear such economic burden.

3. Substantiality. The economic effect of an allocation (or allocations) is substantial if there is a reasonable possibility that the allocation (or allocations) will affect substantially the dollar amounts to be received by the Investing Companies from the Joint Venture, independent of tax consequences. Notwithstanding the preceding sentence, the economic effect of an allocation (or allocations) is not substantial if, at the time the allocation becomes part of the Joint Venture agreement,

(i) the after-tax economic consequences of at least one Investing Company may, in present value terms, be enhanced compared to such consequences if the allocation (or allocations) were not contained in the Joint Venture agreement, and

(ii) there is a strong likelihood that the after-tax economic consequences of no Investing Company will, in present value terms, be substantially diminished compared to such consequences if the allocation (or allocations) were not contained in the Joint Venture agreement.

In determining the after-tax economic benefit or detriment to a Investing Company, tax consequences that result from the interaction of the allocation with such Investing Company's tax attributes that are unrelated to the Joint Venture will be taken into account.

Author: Verlon Frost.

Authority: Sections 40-2A-7(a)(5) and 40-18-197, **Code of Alabama 1975**, as amended.

History: Emergency regulation effective August 17, 1995 expired December 14, 1995.

Permanent regulation filed November 9, 1995, effective date December 14, 1995.

Amended January 26, 1998, effective date March 2, 1998.

810-2-7-.07 Affidavit Required.

(1) **SCOPE.** This regulation applies to the Affidavit that is required to be filed with the Department which states that the Investing Company was, during the tax year for which the Capital Credit was claimed, in complete compliance with Section 40-18-198, **Code of Alabama 1975**, as amended.

(2) **DEFINITIONS.** Terms defined in Reg. 810-2-7-.01 are incorporated herein by reference for purposes of this regulation, unless the context clearly indicates otherwise.

(3) **PURPOSE.** The purpose of this regulation is to provide the guidelines necessary to insure the Investing Company certifies to the Department that the conditions required to entitle the Investing Company to the Capital Credit have been met during the tax year for which the Capital Credit is claimed.

(4) **PROCEDURE.** At the time of filing any tax return with the Department in which a Capital Credit is claimed against the income generated by or arising out of a Qualifying Project, the chief executive officer, the chief financial officer, or the Person signing the tax return on behalf of the Investing Company shall file with the Department an Affidavit stating that

(a) the Investing Company was, during the tax year for which the Capital Credit is claimed, in complete compliance with the conditions required to be met in order to qualify the Investing Company for the Capital Credit, and

(b) the sum of all Capital Credits utilized to date when added to the Capital Credit claimed in the current return, do not exceed the Capital Costs of the Qualifying Project.

Author: Verlon R. Frost.

Authority: Sections 40-2A-7(a)(5) and 40-18-197, **Code of Alabama 1975**, as amended.

History: Emergency regulation effective August 17, 1995, expired December 14, 1995.

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810-2-7-.08 Election to Receive Capital Credit. The election to receive the Capital Credit for those entities approved by the State Industrial Development Authority prior to January 16, 1995 expired on December 31, 1996.

Author: Jeannine K. Brown and Kelly M. Graham.

Authority: Sections 40-2A-7(a)(5) and 40-18-197, ***Code of Alabama 1975***, as amended.

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